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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/524,112

12/09/2005

Harlan A. Hurwitz

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OLIFF & BERRIDGE, PLC

P.O. BOX 320850

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EXAMINER

SCARITO, JOHN D

ART UNIT

PAPER NUMBER

3696

MAIL DATE

DELIVERY MODE

02/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/524,112	Applicant(s) HURWITZ ET AL.	
	Examiner John D. Scarito	Art Unit 3696	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): §112-2nd paragraph rejection of Claim 5.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-18, 23 & 35.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☒ Other: See Continuation Sheet.

/THOMAS A DIXON/
Supervisory Patent Examiner, Art Unit 3696

/John D. Scarito/
Examiner, Art Unit 3696

Continuation of 11. does NOT place the application in condition for allowance because: First, Examiner called to question §112-1st paragraph support for "and" in amended Claims 1, 23 & 35 [see Final Office Action, page 6, lines 1-13]. Applicant's original language stated "the user login operation can be done before, during or after the step of processing the payment media". Examiner interprets this as: (1) "the user login operation can be done before...the step of processing the payment media", (2) "the user login operation can be done...during...the step of processing the payment media" OR (3) "the user login operation can be done...after the step of processing the payment media". Here, with the substitution of "and" for "or" Examiner similarly interprets the phrase as: (1) "the user login operation can be done before...the step of processing the payment media", (2) "the user login operation can be done...during...the step of processing the payment media" AND (3) "the user login operation can be done...after the step of processing the payment media". As such, the substitution of "and" appears to suggest possible multiple login operations (i.e. can be done before, can be done during AND can be done after the processing step). Applicant's paragraph 53 supports that the "controller...performs the user login operation either before, during or after processing the payment media". [see Applicant's Response, page 7, lines 18-20]. As such, paragraph 53 does not support optional multiple logins, but only one login (i.e. either...or). Applicant appears to have support for login before, during, or after the processing step but not combinations of these (i.e. login before and during..., login during and after..., login before and after..., etc.). In sum, although likely unintended, Applicant's amendment to include "and" could be reasonably interpreted to read on an embodiment not contemplated by or in possession of Applicant at the time of application for patent. Aside, Examiner suggests that Applicant clarify who/what initiates the login operation (i.e. the machine or the user). Examiner is unsure whether Applicant has support for leaving it to the user to decide whether to login before, during or after the step of processing.

Next, Applicant argues that Ling ('907) is not combinable with Siemens ('340) in a §103 rejection. Applicant's arguments have been fully considered but are unpersuasive [see Applicant's reply of 02/02/09, lines 18-21]. Applicant's attempt to suggest the skill in the art as "one of ordinary skill in the art of machines that accept payment media" is too narrow [see Id]. Ling ('907) discloses a process of completing transactions and login as a part of said transaction processing [paragraph 2 & 8]. Here, Examiner asserts that even one of ordinary skill would appreciate login processes (i.e. logins are pertinent to many fields, not just machines that accept payment media). As such, one searching the field login processing would consider references such as Ling ('907). Further, Applicant's argument of teaching away is similarly unpersuasive [Applicant's Response, page 10, lines 5-7]. Here, although Ling ('907) may disclose much more than a login process (i.e. optionally saving a login so that future login is not required), it is still a reference for all that it discloses, including "background information" [see Applicant's Response, page 9, line 24]. Examiner points Applicant to his original discussion and rationales of obviousness. [see Final Office Action, pages 7-8] Applicant may wish to clarify what exactly constitutes "processing" to further distinguish and particular claim his/her invention.

Continuation of 13. Other: Claims 1-18, 23 & 35 would be rejected under the previously presented grounds [see Final Office Action].